

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 94-0726 CS

Controlled Substance Excise Tax

For Tax Period: September 22, 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax – Imposition

Authority: IC 6-7-3-5; IC 6-7-3-6; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was found in possession of marijuana on July 9, 1993, by the Indiana State Police. Taxpayer was assessed the controlled substance excise tax on September 22, 1994. Taxpayer protested the tax assessment and requested an administrative hearing. An administrative hearing was scheduled for March 2, 1999. Taxpayer failed to appear at the hearing. This Letter of Findings is written based on the best information available to the Department. Additional relevant facts will be presented below, as necessary.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

Indiana Code Section 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed, or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Pursuant to Indiana Code Section 6-7-3-6:

"The amount of the controlled substance excise tax is determined by:

- (1) the weight of the controlled substance. . ."

Taxpayer was arrested and the controlled substance excise tax was assessed based on 2.36 grams of marijuana.

Pursuant to IC 6-8.1-5-1(b), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer protested the assessment but failed to appear, himself or by representation, at the administrative hearing and present evidence that the assessment was invalid. As such, the taxpayer failed to meet his burden.

FINDING

Taxpayer's protest is denied.